

In re Appl. of Krupa
Application No. 09/759,875
Reply to Office Action of May 12, 2003

REMARKS

The following remarks are responsive to the May 12, 2003 Office Action.

In the Office Action, the Examiner rejected claims 65, 66 and 68-75 under 35 U.S.C. § 103(a) as unpatentable over U.S. Patent No. 6,447,014 (Seidl) in view of U.S. Patent Application Publication 2001/0017817 (De La Huerger). Claim 67 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Seidl in view of De La Huerger and further in view of U.S. Patent No. 4,641,347 (Clark et al.)

In support of these rejections, the Examiner states that, with respect to claims 65, 66 and 68-75, Seidl discloses in Figures 2B, 3 and 4, a label for pharmaceutical use that has a symbol printed on a second label that can initially be placed on a container and a transparent label comprising indicium; wherein the indicium is adjacent, and aligned with the symbol so as to allow the indicium and the symbol to be scanned together by a detector; and wherein the label has a portion which may cover part of the symbol while allowing for simultaneous scanning by a detector. The Examiner went on to say that Seidl does not disclose a label having a first portion and a second portion with the second portion extending away from the outer boundary of the first portion with indicium on the second portion that that is a checksum symbol.

According to the Examiner, De La Huerger does, however, have a label that has a rectangular first and second portion with the first portion having indicia and the second portion having indicium. Therefore, according to the Examiner it would have been obvious to one having ordinary skill in the art to combine the teachings of Seidl with De La Huerger.

The Applicant respectfully disagrees with this assertion.

The Examiner's reasoning makes it appear that Seidl discloses two separate labels that can be aligned in the same way the second portion of the label claimed by the Applicant is

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aligned with a symbol on a container. A closer reading of Seidl shows that such reasoning is an incorrect oversimplification of the label claimed in the patent.

Contrary to the Examiner's assertions, Seidl does not disclose a label that is printed on a second label that can be placed on a container and a transparent label having indicium that can be placed adjacent and aligned with the symbol. What Seidl does disclose is a single, multi-layer label having a top opaque layer, that includes a recess, overlying a bottom layer such that a portion of the marking on the bottom layer is positioned below the recess and visible therethrough. This marking on the bottom layer is then aligned, through the recess, with marking on the top layer.¹

With respect to the De La Huerga application, that application does not disclose, or in any way suggest, printing indicia on the second portion of the label so as to allow the indicia to be read or scanned in conjunction with a symbol or separate label affixed to a container. Instead, the second portion of the label shown in Figures 16-20 is used as a bottom portion to which is attached an enhancement device that is to be placed on a corresponding reading sensor of an interactive medication monitoring device.² This monitoring device may have a RF sensor that may support one or more vials that have the enhancement devices underneath their undersurface (*i.e.*, devices attached to the second portion of the label).³ Again, De La Huerga does not teach or suggest that any indicia is included on the second portion of the label, or even that the second portion of the label itself, is aligned with or compared to any symbol on a container.

For these reasons, the Applicant believes that the Examiner is wrong to reject claims 65, 66 and 68-75 under 35 U.S.C. § 103(a) as being obvious over Seidl in view of De La

¹ U.S. Patent No. 6,447,014, col. 6, ll. 43-53.

² U.S. Patent Appl. No. 2001/0017817, col. 24, ¶ 0280.

³ *Id.*

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Huerga. Nothing in either Seidl or De La Huerga suggests combining the disclosures of the two documents. Furthermore, the Examiner has not provided an explanation as to how one would be motivated to combine the two without the knowledge of the Applicant's invention. Because the second portion of the label disclosed in Figures 16-19 of De La Huerga is only used to help position the label on the container so as to better locate the enhancement device, the Applicant believes that the Examiner is making the rejection of claims 65, 66 and 68-75 based on hindsight after seeing the Applicant's invention. Such a rejection is improper and should be withdrawn.

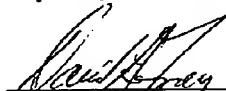
Despite the Applicant's disagreement with the Examiner on the rejection of claims 65, 66 and 68-75 under 35 U.S.C. § 103(a), claim 65 has been amended to more particularly claim a single-layer label that has a side that attaches directly to the surface of the container. Because Seidl claims a multi-layer label, that includes at least two layers overlying one another, the disclosure of Seidl in combination with De La Huerga does not render obvious claim 65, as amended. For this reason, the applicant requests that the Examiner *withdraw the* rejection of claims 65, 66, and 68-75 under 35 U.S.C. § 103(a) and allow the claims to issue.

The Applicant also requests that the Examiner withdraw the rejection of claim 67 under 35 U.S.C. § 103(a). Claim 67 depends from claim 65. Claim 65, as amended is directed to a single-layer label. Because this type of label is not disclosed in Seidl, claim 67 is not rendered obvious by the combination of Seidl in view of De La Huerga and further in view of Clark et al. For this reason, the Applicant requests that the Examiner *withdraw the* rejection of claim 67 under 35 U.S.C. § 103(a) and allow the claim to issue.

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This application is believed to be in condition for allowance and early favorable action is requested. The Examiner is requested to call the undersigned attorney if that would be helpful in resolving any matters that might remain.

Respectfully submitted,



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